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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MIGUEL ANGEL TORRES-JACINTO,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 05-74818

Agency No. A72-934-230

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted May 20, 2008^{**}

Before: PREGERSON, TASHIMA, and GOULD, Circuit Judges.

Miguel Angel Torres-Jacinto, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's ("IJ") decision denying his request for a waiver of

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

inadmissibility under 8 U.S.C. § 1182(h). Our jurisdiction is governed by 8 U.S.C. § 1252. We review de novo constitutional and legal questions. *See Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We dismiss in part, deny in part and grant in part the petition for review and remand for further proceedings.

We lack jurisdiction to review the IJ's discretionary hardship determination. *See* 8 U.S.C. § 1252(a)(2)(B)(i); *see also Martinez-Rosas v. Gonzales*, 424 F.3d 926, 929-30 (9th Cir. 2005).

Torres-Jacinto's contention that the agency violated his due process rights is not supported by the record.

Torres-Jacinto was denied his statutory right to counsel because the IJ failed to secure his knowing and voluntary waiver of the right. *See Hernandez-Gil v. Gonzales*, 476 F.3d 803, 806 (9th Cir. 2007) (alien did not knowingly and voluntarily waive his right to counsel). The absence of counsel at Torres-Jacinto's hearing resulted in prejudice because with counsel, it is likely that Torres-Jacinto would have "more advantageously presented" his case of extreme hardship. *See id.* at 809.

PETITION FOR REVIEW DISMISSED in part; DENIED in part; GRANTED in part; REMANDED.